IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Badri Narayan Purohit v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.4460/1992
under Article 226 of the Constitution of India.

Date of Order : 10th August, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.K.Lohra, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The petitioner entered in service of the respondent being appointed as Teacher Gr.III w.e.f. 23.9.1965. On 2.7.1971 the petitioner proceeded on leave duly sanctioned by competent authority. After availing the leave the petitioner due to compelling circumstances failed to report on duty. The petitioner because of mental ailment could not join his duties but on his behalf his wife repeatedly sent the applications for leave. After prolong treatment the petitioner was declared fit to join duties in the month of November, 1980. The petitioner after getting fit submitted a representation to the authorities concerned to allow him to join duties and the competent authority permitted the petitioner to join

duties as Assistant Teacher under an order dated 2.3.1981. At the time of joining the petitioner's pay was fixed at the minimum of pay scale prescribed for the post of Teacher Gr.III i.e. of Rs.355-570.

After joining the duties the petitioner was served with a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”) along with a charge sheet alleging of misconduct i.e. of wilful absence from duties for the period commencing from 2.7.1971 to 30.10.1980. A regular inquiry was conducted against the petitioner, however, the inquiry officer after holding the inquiry gave a finding that the petitioner's absence from duty was not wilful, accordingly the disciplinary authority while accepting the report submitted by the inquiry officer exonerated the petitioner from the charge of misconduct by an order dated 17.8.1982. The disciplinary authority while exonerating the petitioner also made a recommendation to the competent authority to treat the period of absence of petitioner as extra ordinary leave.

The respondents though permitted the petitioner to join the duties but did not allow any annual grade increments and his pay was continued to be fixed at the minimum of pay scale applicable to the post of Teacher Gr.III. By an order dated 24.9.1991

fixation of the petitioner's pay was made at Rs.490 in the pay scale of Rs.490-840 w.e.f. 1.9.1981, at Rs.880 in the pay scale of Rs.880-1680 w.e.f. 1.9.1986 and at Rs.1200 in the pay scale of Rs.1200-2050 w.e.f. 1.9.1988. By an order dated 16.5.1992 passed by the Principal, Government Senior Secondary School, Jalore the order dated 24.9.1991 was cancelled and pay of the petitioner was again fixed at Rs.355 per month in the pay scale of Rs.355-570. The order dated 24.9.1991 was cancelled in pursuance of an order dated 8.5.1992 passed by the District Education Officer (Boys), Jalore. Being aggrieved by the order dated 16.5.1992 the petitioner preferred the present writ petition.

The respondents filed a reply to the writ petition after service of notices issued by this Court stating therein that the Government by a communication dated 18.4.1987 declined to allow the extra ordinary leave to the petitioner and, therefore, he is required to be treated as a fresh appointee to the post of Teacher Gr.III in pursuance of the order dated 2.3.1981. The copy of the order dated 18.4.1987 was not annexed with the reply to the writ petition, therefore, this Court by an order dated 22.1.1996 directed the respondents to place on record a copy of the order dated 18.4.1987 supported with an affidavit indicating therein as to whether at the time of passing of aforesaid order the petitioner was given an opportunity of hearing.

In compliance of the directions given by this Court on 22.1.1996 the respondents filed a copy of the order dated 18.4.1987 as Anx.R/3 with an affidavit sworn in by Shri Udaimal Kothari, the then Senior Deputy District Education Officer (Legal), Jodhpur. In the affidavit aforesaid a statement in quite unambiguous terms was given by Shri Udaimal Kothari that the service book and other relevant record of the petitioner for grant of extra ordinary leave for the period commencing from 2.7.1971 to 30.10.1980 was forwarded to the Director, Primary and Secondary Education, Rajasthan, Bikaner as well as to the State Government and the State Government declined to allow extra ordinary leave to the petitioner. Nothing was stated in the affidavit sworn in by Shri Udaimal Kothari with regard to the fact as to whether at the time of passing the order dated 18.4.1987 the petitioner was given an opportunity of hearing or not. The petitioner filed a counter affidavit stating therein in quite unambiguous terms that no opportunity of hearing was given to him before passing the order dated 18.4.1987 and by the said order his previous services were forfeited by the respondents. The petitioner after receiving the copy of letter dated 18.4.1987 also challenged the validity of the same by making necessary amendments in the writ petition.

The grievance of the petitioner is that the respondents retired him from services by keeping his

pay at the minimum of pay scale of Rs.355-570 though the same was revised time to time. It is also contended by the petitioner that once he was exonerated by the disciplinary authority from the allegation of wilful absence, there was no reason to forfeit his earlier services and also for not granting him extra ordinary leave for the period concerned.

Heard counsel for the parties.

The facts involved in this petition are not much in dispute. The petitioner remained absent from duties from 2.7.1971 to 30.10.1980 and for the period referred above an inquiry was conducted under Rule 16 of the Rules of 1958 by competent authority. The disciplinary authority after holding regular inquiry reached at the conclusion that absence of the petitioner for the period concerned was not wilful and, therefore, exonerated him from the charge of misconduct. Once the petitioner was exonerated from the charge of misconduct, no reason left with the respondents to forfeit earlier services of the petitioner. The right to forfeit previous service is vested with the respondents under Rule 86 of the Rajasthan Service Rules, 1951. This right can be exercised only in event of wilful absence of a government servant. In the present case the disciplinary authority exonerated the petitioner from the allegation of wilful absence, therefore, the

respondents were having no authority to forfeit previous services of the petitioner.

The respondents in their reply have not stated any reason for declining the request and recommendation made by the disciplinary authority to allow extra ordinary leave to the petitioner. It is well settled that during extra ordinary leave a government servant is not entitled for any wages, annual grade increments and that part of service cannot be taken into consideration for computing even the pension. It was responsibility of the respondents to regularise the period of absence by treating the same as extra ordinary leave. No reason was available to the respondents to decline extra ordinary leave of the petitioner. The extra ordinary leave should have been allowed by the respondents to maintain the petitioner's continuity in service.

It is also sad state of affairs that though the petitioner was permitted to join duties by the respondents he was fixed only at the minimum of pay scale applicable to the post of Teacher Gr.III. The respondents did not allow any annual grade increment to the petitioner uptil the date of his retirement. Rule 29 of the Rajasthan Service Rules, 1951 puts an embargo upon government to allow annual grade increments to a government servant as a matter of course, if not otherwise stopped. In the instant case

there was no order to stop annual grade increments, therefore, the respondents wrongly denied annual grade increments to the petitioner.

The respondents also not made fixation of the petitioner's pay in the revised pay scales though the same stood revised thrice during his service tenure after March, 1981. A government servant is entitled to be fixed in revised pay scales in normal course. It is stated by counsel for the petitioner that the pension of the petitioner too has not been determined by the respondents in accordance with the Rules.

In view of whatever discussed above, I am of the considered opinion that the respondents erroneously forfeited past services of the petitioner, also declined erroneously for grant of extra ordinary leave to the petitioner for the period commencing from 2.7.1971 to 30.10.1980 and also erroneously not fixed the petitioner in the revised pay scales. The respondents also denied illegally the annual grade increments to the petitioner. The petitioner being exonerated from the allegation of wilful absence was entitled to remain in services with continuity from the date of his initial appointment i.e. 23.9.1965. The petitioner is also entitled to get his pay fixed in the pay scales applicable to the post of Teacher Gr.III as revised time to time. The period commencing from 2.7.1971 to 30.10.1980 is required to be treated

as extra ordinary leave availed b the petitioner. The pensionary and other retiral benefits pertaining to the petitioner are also required to be determined accordingly.

Consequently, the writ petition is allowed. The respondents are directed to make fixation of petitioner's pay in regular pay scales pertaining to the post of Teacher Gr.III as revised time to time by treating him in their continuous employment from the date of his initial appointment i.e. 23.9.1965. The period commencing from 2.7.1971 to 30.10.1980 be treated as the period of extra ordinary leave availed by the petitioner. The respondents are further directed to allow all annual grade increments to the petitioner except for the period pertaining to extra ordinary leave. All pensionary and post retiral rights of the petitioner be determined accordingly. The arrears of money accruing in favour of the petitioner as a consequence of directions given above be paid to him within a period of six months from today with interest @ 6.5% per annum.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.